CF0000061367

Cr. A. 2324/97 (2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Jabalpur)

No. 0.6221 ... 2.6222 ..... Name ① पुरीराम s/o सरदू गोंड
② कृष्णा उर्फ कृष्णी s/o पुरीराम गोंड

Father's name ..... ग्राम ..... खरदरहा ..... थाना ..... सरकनीवा .....

Residence ..... रायपुर (म.प्र.) ..... Age .....

Sentenced to ..... आजीवन कारावास ..... On ..... 11/9/97 .....

Under section ..... 302, 34, भा० दं०वि० ..... by ..... मान० अपर सत्र न्या० वर्षी विलासपुर (सिवनी - रायपुर म०प्र०)

S.T. No. - 18/94

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not - Yes / No

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No. 0.6221, 2.6222 ..... Name ..... पुरीराम s/o सरदू
कृष्णा उर्फ कृष्णी s/o पुरीराम

Confined in ..... केन्द्रीय ..... Jail ..... रायपुर (म.प्र.) .....

No. ..... 335/विविध/97 ..... Dated ..... 8/10/1997 .....

Forwarded to the CHIEF JUDICIAL MAGISTRATE मान० अति० जे०पी०एम० महोदय ..... togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

मान उच्च न्या० म०प्र० जबलपुर

सलंग्न :- S.T. No. 18/94 की सत्य प्रति।

Superintendent
Central Jail Raipur. (M.P.)

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
Received on 17 OCT 1997
Registration No. 211
Receipt Clerk
High Court, Jabalpur.

(P. T. O.)

HIGH COURT OF CHHATTISGARH AT BILSAPUR

Division Bench: Hon'ble Shri L.C.Bhadoo
& Hon'ble Shri Dhirendra Mishra, JJ

Criminal Appeal No. 2324/1997

Appellant : Puniram & Another

VERSUS

Respondents : State of Madhya Pradesh.

Smt. Uma Tiwari, learned counsel for the appellants.
Shri U.N.S.Deo, Addl. Public Prosecutor with Shri Alok Bakshi, learned G.A. for the State.

JUDGMENT

(Delivered on 13 .1.2006)

Per Dhirendra Mishra, J

The appellants have preferred this appeal against the *impugned judgment dated 01.09.97 passed by the Additional* Sessions Judge, Baloda Bazar in Session Trial No. 18/94 convicting them for the offence under Section 302/34 of the IPC and sentencing them to undergo imprisonment for life and pay fine of Rs. 5,000/- each, in default of payment of fine to further undergo RI for one year each.

2) Case of the prosecution in brief is that on the date of incident i.e. 21.08.94 deceased Sayeed Ram had eve-teased the daughters of appellant Puniram whereupon a meeting was convened in the village. However, deceased Sayeed Ram did not attend the meeting. At about 8.00 p.m. Puniram and his associates attacked the deceased outside the house and beat him by fist and kicks. His brother Bodhan, his wife and one Rath Singh saw the incident. Bodhan tried to mediate also. After beating the deceased they left him. Sayeed Ram some how returned home crawling. His son Sukhram massaged the deceased. However in the morning of 22/08/94 another son of the deceased namely Gandharu told that his father Sayeed Ram was not talking whereupon Bodhan went to see Sayeed Ram and found him dead. On the basis of report Ex.P.4 lodged by Bodhan on 22.08.94 Crime No. 67/94 was registered in police station Sarsewa against Puniram and his associates under Section 302/34 of the IPC. Thereafter inquest report of Ex.P.1 was prepared on 23.08.94. A spot map Ex.P.2 was prepared on 30.08.94. Halka Patwari of village Khurdarha prepared Nazri Naksha Ex.P.3A dated 30.08.94. ASI G.P.Verma prepared Nazri Naksha dated 23.08.94. Dead body of the deceased was sent for autopsy vide memo of Ex.P.7 whereupon Dr. C.S. Patel, P.W.21 conducted the post mortem on the body of the deceased and submitted its report Ex.P.7. A club and a blood stained bed sheet was seized from constable Daulal Chandrakar vide seizure memo Ex.P.8 and the same was sent for chemical examination to Forensic Science Laboratory as per Ex.P.9. After recording the statement of witnesses charge sheet for the offences under Sections 149, 452 and 302/34 of the IPC was filed against the appellants namely Puniram, Karam Singh, Chandan Lala, Sudeshan, Nirbhay and Anjor Singh in the Court of Additional Chief Judicial Magistrate, Baloda Bazar who committed the case to the Court of Session

Judge, Raipur from where Additional Sessions Judge Baloda Bazar received it on transfer for trial.

3) Learned Additional Sessions Judge framed the charges against the accused persons as above. The accused persons abjured their guilt and pleaded false implication in the case. Thereupon the prosecution examined as many as twenty two witnesses in support of its case. Statements of accused persons were also recorded under Section 313 of the Cr.P.C. All the accused persons denied the allegations made against them by the witnesses. After hearing counsel for the parties the Additional Sessions Judge convicted and sentenced the appellants as mentioned above and whereas acquitted the other accused persons. Hence this appeal.

4) Learned counsel for the appellants submits that the learned Additional Session Judge has convicted the appellants on the basis of circumstantial evidence by recording a finding that though there is no eyewitness to the incident, offence under Section 302/34 of the IPC is made out against the appellants. The circumstances relied upon by the trial Court are as under:

(A) from the postmortem report Ex.P.11 it is established that the deceased had sustained in all eight abrasions on various parts of the body, fourth, fifth and eleventh ribs of the left side and sixth and seventh ribs of the right side were found broken. All the injuries were caused by hard and blunt object and the cause of death is shock due to the injuries and the death was homicidal in nature. Though the witnesses have denied the story of eve teasing but P.W.16 Kisnobai has stated that when she had gone to her field along with her

sister Radha the deceased was draining out the water from their field and on this they had stopped him from doing so. Taking assistance from the FIR it has been observed that as the deceased eve-teased these girls, the Panchayat was convened and as such the appellants had motive to commit murder of the deceased.

(B)The witnesses have stated that the appellants dragged the deceased from his house and after that he returned home and died on the following morning. On the basis of these circumstances the trial Court has convicted and sentenced the appellants.

5. Learned counsel for the appellants submits that admittedly there is no eyewitness to the incident and they have been convicted on the basis of circumstantial evidence only. However, according to the counsel for the appellants the circumstances relied upon by the trial Court do not point unerringly towards the guilt of the accused/appellants and the appellants have been convicted merely on the ground that they were seen dragging the deceased and thereafter he was found dead on the following morning. It is argued that it is the case of the prosecution that the deceased was dragged to the place where Panchayat was convened and there he was assaulted by the appellants and other six accused persons and was found dead on the following morning, therefore, it cannot be said that the involvement of the appellants in the crime has been proved beyond reasonable doubt particularly when the other accused persons against whom also there are identical allegations have been given the benefit of doubt. Learned counsel for the appellants

submits that, in these circumstances, the appellants ought to have been given the benefit of doubt.

6. On the other hand learned counsel for the respondent/State supported the impugned judgment of conviction and sentence passed by the trial Court.

7. We have heard learned counsel for the parties and perused the material available on record.

8. PW-1 Roop Singh has stated that the appellant Puniram had come to him and apprised that he had a quarrel with Sayeed Ram and thereafter at about 8 p.m. he learnt that Sayeed Ram was dead. PW-4 Santram has deposed that all the accused persons present in the Court assaulted the deceased with fists and kicks resulting in his death, but however he did not witness the incident and has only learnt about it. PW-7 G.P Verma, the ASI has registered the FIR of Ex P-4, prepared inquest report Ex P-1, Nazari Naksha Ex P-6, sent the body for autopsy vide Ex P-7 and recorded the statements of the witnesses. PW-9 Bodhan, the elder brother of the deceased has stated that at about 8 p.m. he saw the appellants dragging the deceased from his house towards a village lane (Gali), however, he did not see the deceased after he returned home. PW-10 Sukhuram, the son of the deceased has stated that deceased was dragged by the appellants towards a village lane but he did not see the Marpeet. Thereafter, his father returned home and he was talking. He has stated that only Puniram and Sudarshan had assaulted his father. PW-11 Suritram is the witness of Inquest Report of Ex P-1. PW-13 Gandharu has stated that Sadhuram informed him that in the night Puniram and Sudarshan had a quarrel with the deceased Sayeed Ram and he was not talking, whereupon he came to the house of

Sayeed Ram and found him dead. However, this witness has been declared hostile. PW-16 Kisno Bai has also been declared hostile. PW-17 Sadhuram has stated that at about 7-8 p.m. the appellants called the deceased in the meting and abused him by calling " Salla Beta" . This witness has also been declared hostile. He has denied that the appellants and other accused persons came to the house of Sayeed Ram and abused him for eve-teasing their daughters. PW-21 Dr. C.S. Patel who has conducted post mortem on the body of the deceased has also found that number of ribs of left and right side were found broken and the cause of death was opined as shock due to the injuries sustained by the deceased and the nature of death was homicidal.

9. Thus it is not disputed that the death of the deceased was homicidal in nature. The only question for adjudication of this appeal is whether the prosecution has established the guilt of the appellants beyond reasonable doubt.

10. For convicting any person on the basis of circumstantial evidence it is necessary that: (i) the circumstances from which the inference of guilt is to be drawn must be cogently and firmly established. (ii) Circumstances should be of a definite tendency unerringly pointing towards guilt of the accused. (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent within the guilt of the accused but should be inconsistent within his innocence.

11. If we apply the aforesaid test in the present set of facts then it is difficult to sustain the judgment of conviction passed by the trial Court as from the evidence on record it is clear that the prosecution has not been able to establish any motive on the part of the appellants to commit murder of the deceased and reliance placed by the trial court in this regard on the allegations present in the FIR is contrary to law as the allegation made in the FIR is not a substantive piece of evidence and no other witness has stated that the appellants had nourished any ill-will against the deceased.

12. Secondly the only circumstance that has been established through the evidence that on the date of incident the appellants dragged the deceased from his house and took him towards a village lane. It is the case of the prosecution that when the deceased did not attend the Panchayat meeting, the appellants as also the other accused persons came to his house and took him to the Panchayat and in the process he was beaten by fist and kicks. Thus simply on the basis of evidence to this effect that the appellants dragged the deceased towards the Panchayat or the village lane, it cannot be conclusively held that the appellants after dragging the deceased assaulted him through fists and kicks and as a result of such assault deceased died the next morning after returning home. Thus the conduct attributed to the appellants does not unerringly point towards the guilt of the appellants and the possibility that the deceased after being taken from his house the other persons present in the meeting had assaulted him, cannot be ruled out.

13. Thus, on the basis of aforesaid analysis the finding of the trial Court convicting and sentencing the appellants as above cannot be sustained as it ought to have extended the benefit of doubt to the appellants also.

14. As a result, the appeal succeeds, judgment of conviction and sentence passed by the trial Court is set aside. The appellants are acquitted of the charge leveled against them. They are directed to be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge